SINGAPORE ACADEMY OF LAW

LAW REFORM COMMITTEE

SUB-COMMITTEE ON COMMERCIAL LAW

PROPOSED AMENDMENTS TO THE CARRIAGE OF GOODS BY SEA ACT

REPORT

CONTENTS

SUPPLEMENTARY NOTE ON REPORT ON PROPOSED AMENDMENTS TO THE CARRIAGE OF GOODS BY SEA ACT

1. The Report of the Sub-Committee was submitted to Justice of Appeal L P Thean, Chairman of the Law Reform Committee on 12th September 1994.

2. In addition to the members of the Law Reform Committee, copies of the Report were also circulated, on the Chairman's directions, to Justice G.P. Selvam, Mr Christopher Lau, Mr Steven Chong and Mr Kenneth Tan for their views.

3. The Law Reform Committee met on 22nd October 1994. The above persons and Mr David Chong, a member of the Sub-Committee, were invited to present their views. As a result of the discussions at this meeting, the draft Bill was amended by the Sub-Committee and re-submitted to the Chairman. A copy of the Bill showing the changes in "strike-out" and "underlined" fonts is attached at Appendix I.

4. The main changes are summarised as follows:

(1) Clause 1(2)

A new sub-clause (2) has been inserted for the Bill to apply to contracts of carriage entered into on or after the commencement date.

(2) Clause 2 - Section 3(2)

The word "in" in the phrase "in a port in Singapore" has been deleted as it is a typographical error.

(3) Clause 2 - Section 3(4) and (5)

Clause 4(b) has been amended to delete the words “as if the receipt were a bill of lading" to make it clear that it is not necessary to state these words in the non-negotiable receipt. In its place, a new subsection (5) was inserted which contains the modifications required in applying the Rules to the non-negotiable receipt as if it were a bill of lading.

(4) Clause 2- Section 3(8)

The former section 3(8) has been deleted as the Law Reform Committee was not in favour of a retrospective declaratory effect.

(5) Explanatory Statement

The Explanatory Statement has been revised in the light of the changes. The reference to the Epar has also been removed as there are already conflicting views on the decision on that case.

5. At the subsequent meeting of the Law Reform Committee on 11th November 1994, the revised draft Bill was considered and approved with one amendment viz the deletion of the words "For the purposes of subsection (4)" in section 3(5). It was felt that these words were superfluous and the omission of these words would make section 3(5) more elegant.

6. On 29th November 1994, the Chairman of the Law Reform Committee submitted the Report and Bill as amended and approved by the Law Reform Committee to the Attorney-General.

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AG/60/78

12 Sep 1994

The Honourable
Justice L P Thean
Chairman
Law Reform Committee
c/o Supreme Court

Dear judge,

Report on the Review of the Carriage of Goods by Sea Act

This sub-committee was formed on 16 Feb 93 as a result of a resolution proposed by Attorney-General Chan Sek Keong then in his capacity as Chairman of the Law Reform Committee. Later on the sub-committee continued its work under your chairmanship. The sub-committee was appointed with the following terms of reference:

(a) To consider, after consulting the business community, whether Singapore should ratify the United Nations Convention on Contracts for the International Sale of Goods; and

(b) To examine and propose reform to the Carriage of Goods by Sea Act.

I am pleased to submit to you the attached report which addresses para (b) of the terms of reference. Para (a) is addressed in a separate report.

In brief, the sub-committee recommends that the Act be amended to remove any doubt that the *Hague-Visby Rules* have the force of law in Singapore (as decided by the late Kulasekaram J in *The Epar*) and to ensure that the Act is fully consistent with the *Hague-Visby Rules*. A draft Bill prepared by the sub-committee is attached as an Appendix to the Report. Prof Francis Reynolds has kindly given us his informal views on an earlier draft and his views have been incorporated in the Report.

Yours faithfully,

CHARLES LIM AENG CHENG
Chairman
Sub-Committee on Commercial Law
Law Reform Committee
Encl.

EXECUTIVE SUMMARY

The Sub-committee for Commercial Law has made certain recommendations in relation to the Carriage of Goods by Sea Act, Chapter 33, 1985 Revised Edition of the Singapore Statutes (COGSA). A summary of these recommendations is set out below:

1. COGSA should be amended because of the inapt legislative technique adopted to give statutory force to the Hague-Visby Rules. The inapt legislative technique used in COGSA has brought about uncertainty with regard to the applicability and mandatory nature of the Hague-Visby Rules. Among other things, the proposed amendment will result in the repeal of section 5 of COGSA which requires the insertion of a clause paramount in bills of lading issued in Singapore covering shipments of goods by sea from Singapore (i.e., outbound shipments).

2. The amendment to COGSA is a matter of some urgency since there is a divergence of judicial views in Singapore on the applicability of the Hague-Visby Rules and the mandatory nature of the Hague-Visby Rules.

3. The amendment to COGSA is to clarify that the Hague-Visby Rules have the force of law (in the sense of being an overriding mandatory law) in Singapore since the date COGSA came into force.

4. The effect of the amendment to COGSA will be to give full statutory force to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924, as amended by the Brussels Protocol of 1968. In this connection, the amendments to COGSA should be modelled on the United Kingdom Carriage of Goods by Sea Act 1971.

5. The proposed amendment to COGSA clarifies the compulsory application of the Hague-Visby Rules to shipments covered by bills of lading out of Singapore ports regardless of the destination. This means that the Hague-Visby Rules shall apply to contracts of carriage evidenced by or contained in bills of lading in respect of shipments from one terminal in Singapore to another terminal in Singapore. The relevant industry (oil traders and vessel operators) did not object to the Hague-Visby Rules applying to such shipments between two terminals in Singapore. The business community involved in the bunker trade (that is the sale and supply of bunker fuel oil and lubricants to vessels) were concerned that the Hague-Visby Rules should not be applicable to the bunker trade. There is no cause for concern on this point since the sale and supply of the bunker fuel oil and lubricants do not involve a bill of lading or other similar document of title evidencing or containing a contract of carriage. The absence of a contract of carriage covered by a bill of lading or other similar document of title means that the Hague-Visby Rules are inapplicable.

6. The proposed amendment will also repeal section 6(a) of COGSA since the carriage of goods in sailing ships from Singapore do not normally involve the use of bills of lading or any similar document of title. In any case, where the carriage of goods by sea from Singapore to any other port are not covered by bills of lading or similar documents of title, the Hague-Visby Rules by their own terms provide that the Hague-Visby Rules are inapplicable.

7. The proposed amendment will also repeal section 6(b) of COGSA since the carriage of goods by sea from Singapore to Malaysian ports are invariably covered by bills of lading. In any case, where the carriage of goods by sea from Singapore to Malaysian ports are not covered by bills of lading or similar documents of title, the Hague-Visby Rules by their own terms provide that the Hague-Visby Rules are inapplicable.

8. The proposed amendment will also provide that the Hague-Visby Rules shall "have the force of law" in relation to any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract. This is consistent with Article X(c) of the Hague-Visby Rules which provides that the Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if the contract contained in or evidenced by the bill of lading provides that the Rules or the legislation of any State giving effect to them are to govern the contract.

9. The proposed amendment will also make it possible for the Hague-Visby Rules to "have the force of law" in contracts of carriage evidenced by or contained in a non-negotiable receipt marked as such if it is expressly provided that the Hague-Visby Rules are to govern the contract of carriage as if the non-negotiable receipt (marked as such) were a bill of lading.

10. In practical terms, the proposed amendment to COGSA will prevent contracting parties from contracting out of the minimum regime of rights and liabilities provided in the Hague-Visby Rules. The Hague-Visby Rules do not preclude the contractual carrier from agreeing to undertake liabilities more extensive than that provided for in the Rules.

The Sub-Committee has prepared a Bill (with explanatory statement) containing the amendments to COGSA as proposed in the Report. The Bill is annexed to the Report.

REPORT ON

AMENDMENTS TO THE CARRIAGE OF GOODS BY SEA ACT

TERMS OF REFERENCE

On 16 February 1993, the Sub-Committee on Commercial Law was formed by a resolution of the Law Reform Committee with the following terms of reference:

(a) To consider, after consulting the business community, whether Singapore should ratify the United Nations Convention on Contracts for the International Sale of Goods; and

(b) To examine and propose reform to the Carriage of Goods by Sea Act, Chapter 33 of the 1985 Revised Edition of the Singapore Statutes.

This Report addresses the second term of reference as set out above.

I. INTRODUCTION

1 The Carriage of Goods by Sea Act[1] (hereinafter referred to as "COGSA") is the national law enacted by Singapore to comply with her international obligations arising from her accession to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924, as amended by the Brussels Protocol of 1968. Indeed, section 2 of COGSA defines the "Rules" referred to in the Act as the Rules - popularly referred to as the Hague-Visby Rules - contained in the said International Convention as amended by the Protocol of 1968.

2. COGSA was passed by Parliament on 3 November 1972.[2] Moving the bill at the second reading, the then Minister for Finance, Mr. Hon Sui Sen stated:

> "Most maritime nations of the world have acceded to this [Brussels Protocol of 1968] and have incorporated it in their legislation. Singapore, in keeping with other world maritime nations, has also acceded to the Protocol and is now, therefore, required to pass legislation to incorporate the Protocol. The Bill now before the House seeks to give effect to the Hague Rules relating to the Carriage of Goods by Sea contained in the Protocol agreed internationally at Brussels in 1968. It repeals the Carriage of Goods by Sea Act which gave effect in Singapore to the Hague Rules in their original form. The Rules in their amended form are set out in the Schedule to the Bill."[3]

3. Since the enactment of section 9A[4] of the Interpretation Act, it is legitimate to refer to Parliamentary Debates to ascertain the meaning of legislation. It has been held by the Singapore High Court that section 9A of Interpretation Act is a declaratory enactment and as such the provision operates retrospectively.[5] The Subcommittee takes the view that section 9A of the Interpretation Act will apply to an Act enacted in 1972 and hence, it is legitimate to have recourse to Parliamentary debates in ascertaining the import of COGSA.

4. As directed by section 9A(1) of the Interpretation Act, the court in construing statutory provisions shall prefer "an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not)". This statutory rule of interpretation is popularly known as the purposive approach.

5. From the Minister's second reading speech in Parliament, it is clear that COGSA was passed in Singapore to give statutory force to the Hague-Visby Rules. One of the changes which the Hague-Visby Rules made to the Hague Rules is to be found in Article X of the Hague-Visby Rules. Essentially, Article X makes it clear that the Hague-Visby Rules are to apply to situations where bills of lading are issued in a contracting State[6] or where the carriage is from a port in a contracting State or where the contract (of carriage) contained in or evidenced by the bill of lading provides that the Hague-Visby Rules or legislation of any State giving effect to them are to govern the contract of carriage. Thus, Article X of the Hague-Visby Rules makes it clear that the Hague-Visby Rules are vis-a-vis the Hague Rules to have a wider application.

6. As background information, although COGSA was passed on 3 November 1972, COGSA did not come into force until 16 January 1978. The reason for this delay was the fact that the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 as amended by the Brussels Protocol of 1968 (the Hague-Visby Convention) did not receive sufficient ratifications/accessions to bring it into force until 23 June 1977. Indeed, the United Kingdom only acceded to the Hague-Visby Convention on 1 October 1976 and the United Kingdom Carriage of Goods by Sea Act 1971[7] was brought into force on 23 June 1977.

II. UNCERTAINTY CREATED BY SECTIONS 3(1) & 5 OF COGSA

7. The Carriage of Goods by Sea Act, Chapter 184 of the 1970 Revised Edition of Singapore Statutes (the repealed Act) which was repealed by COGSA had given statutory effect to the Hague Rules.[8] On 11 October 1926, at the sitting of the Legislative Council of the Straits Settlements, the then Attorney-General (Mr. M. H. Whitley) in introducing the Carriage of Goods by Sea Bill[9] said:

> "... for the purpose of securing international uniformity of maritime law as regards bills of lading, a draft Convention was agreed at meetings of the International Maritime Conference in 1922 and 1923. Effect has been given to the draft Convention, so far as the United Kingdom is concerned, by the carriage of Goods by Sea Act, 1924. A similar Act was passed in India in 1925. This Bill is an adaptation of those two Acts."[10]

8. The legislative technique used to give effect to the Hague Rules was to specify the application of the Hague Rules to shipments out of Singapore (see section 2 of the repealed Act) and to further require that every bill of lading or similar document of title[11] issued in Singapore contain an express statement providing that the contract of carriage (contained in or evidenced by the bill of lading or document of title) "is to have effect subject to the provisions" of the Hague Rules as applied by the Act (see section 4 of the repealed Act). This technique was also used to give statutory effect to the Hague-Visby Rules in COGSA.

9. However, the legislative technique employed in COGSA, replicating as it does the technique used in the repealed Act, has spawned uncertainty as to the application of the Hague-Visby Rules. The uncertainty lies with section 3(1) and section 5 of COGSA.

10. Section 3(1) of COGSA may be construed as rendering the Hague-Visby Rules as only applicable to shipments out of Singapore, i.e., outbound cargo covered by bills of lading or similar documents of title. [12]The material words in section 3(1) are "... the Rules have effect in relation to and in connection with the carriage of goods in ships carrying goods from any port in Singapore ...." This construction is inconsistent with the objective of the Hague-Visby Convention. The objective of the Hague-Visby

Convention is to provide a regime of rights, liabilities and immunities for the carriage of goods by sea, and to provide that the regime is applicable:

(a) where bills of lading are issued in a contracting State[13] (not just in Singapore), or

(b) where the carriage covered by a bill of lading is from a port in a contracting State, or

(c) where the contract contained in or evidenced by the bill of lading provides that the Hague-Visby Rules or legislation of any State giving effect to them are to govern the contract of carriage.

11. Thus, a construction which limits the operation of the Hague-Visby Rules (as a matter of statutory law) to shipments out of Singapore (outbound cargo as opposed to inbound and transhipment cargo[14]) does not serve the objective of the Hague-Visby Convention. On this construction, the Hague-Visby Rules will not apply to inbound cargo. If this construction of section 3(1) is correct, it would mean that Singapore has not given full effect to the objective of the Hague-Visby Convention as required by international law.[15]

12. The words "the Rules have effect" in section 3(1) give rise to the contention that parties may agree to contract out of COGSA including the scheduled Hague-Visby Rules. This contention draws support from *Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation)*[16] where the Privy Council took the view that parties could contract out of the Hague Rules notwithstanding that the relevant legislation (passed to give statutory force to the Hague Rules) stated that the Act and the scheduled Hague Rules "**shall**[17] have effect." In this case, the relevant bills of lading were issued in Newfoundland covering the shipment of goods from Newfoundland to New York. The bills of lading did not contain a clause required by section 3[18] of the Newfoundland Carriage of Goods by Sea Act, 1932.[19] After considering various provisions of the Newfoundland Carriage of Goods by Sea Act, 1932 (including sections 1 and 3 thereof), the Privy Council held that the requirement in section 3 for the insertion of a clause paramount was only directory and not an imperative requirement. That being the case, it was unnecessary to consider whether if section 3 had imposed an imperative requirement, contravention of the provision in itself would have rendered the contracts of carriage contained in the bills of lading illegal. More importantly, the Privy Council held that the choice of the governing law as stated in the bills of lading, namely, English law, was a valid choice. It is this aspect of the decision in *Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation)* which has led commentators[20] to advance the view that the Privy Council acknowledged that the statutory language employed in sections 1 and 3 of the Newfoundland Carriage of Goods by Sea Act, 1932 was inapt to create an overriding mandatory rule (in the sense of prohibiting any attempt to contract out of the rule).

13. Professor F.M.B. Reynolds takes the view[21] that the Privy Council in *Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation),* sitting as the final court of appeal from Nova Scotia, need not apply the Newfoundland Carriage of Goods by Sea Act, 1932 unless (a) it was part of the law governing the contract of carriage (which it was not, since the relevant bills of lading contained a clause stating that English law was the governing law of the contract); or (b) it was an overriding mandatory rule[22] of the forum (which it was not, since the Newfoundland Carriage of Goods by Sea Act, 1932 was not a Nova Scotian statute). Even if the requirement of the clause paramount had been an overriding mandatory rule in Newfoundland, the Privy Council, sitting as a final appellate court for Nova Scotia, was not bound to apply the rule.[23]

14. It is clear that it in *Vita Food Products Incorporated* v. *Unus Shipping Co. Ltd. (In Liquidation),* the Privy Council took the view that, on a construction of the statutory language used in sections 1 and 3 of the Newfoundland Carriage of Goods by Sea Act, 1932, the statute did not prevent the parties from agreeing that another law (in that case, English law) be the governing law of the contract of carriage. Section 3 of the said Newfoundland Carriage of Goods by Sea Act, 1932 is the equivalent of section 5 of COGSA. Although, section 1 of the Newfoundland Carriage of Goods by Sea Act, 1932 uses the words "... the rules shall have effect .... ", the Privy Council was not persuaded that the statutory language had the effect of rendering the Hague Rules applicable notwithstanding the parties' choice of the governing law. One would have thought that the word "shall", if anything is to be drawn from it, should make the case for the overriding mandatory nature of the legislation stronger. However, the Privy Council held that notwithstanding the language of section 1 of the Newfoundland Carriage of Goods by Sea Act, 1932, the contracting parties were at liberty to contract out of the legislation and the Hague Rules scheduled thereto.

15. *Vita Food Products Incorporated* v. *Unus Shipping Co. Ltd. (In Liquidation)* may be relied on for the proposition that the words "have effect" (which was also used in section 1 of the Newfoundland Carriage of Goods by Sea Act, 1932) in section 3(1) of COGSA are not capable of making COGSA an overriding mandatory law. Indeed, inasmuch as section 3(1) of COGSA does not employ the word "shall" before the words "have effect", it is *a fortiori* that section 3(1) does not have the effect of rendering COGSA and the Hague-Visby Rules contained therein mandatory and overriding in nature.

16. The stipulation in section 5 of COGSA that every bill of lading or similar document of title issued in Singapore contain the express statement that the contract of carriage contained in or evidenced by the bill of lading or similar document of title is to "have effect subject to the provisions of the Rules as applied by this Act" militates against the view that COGSA is an overriding mandatory law. The stipulation referred to in section 5 of COGSA is sometimes known as the clause paramount.[24] In *Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation),* the Privy Council also held that the omission to include the clause paramount in the bill of lading did not render the contract of carriage illegal. The requirement of the clause paramount imposed by the Newfoundland Carriage of Goods by Sea Act, 1932 was held to be merely directory (as opposed to being imperative).

17. Thus, it is strongly arguable from *Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation)* that the requirement for the clause paramount in section 5 of COGSA is directory and not imperative. It is evident that the use of the clause paramount technique to give statutory force to the Hague-Visby Rules is inapt.[25]

18. The Hague-Visby Covention brought about the wider application of the Hague-Visby Rules but the use of language in s ection 3(1) of COGSA, reminiscent of that employed to give statutory effect to the Hague Rules, is inapt for this purpose. The retention of the clause paramount in section 5 of COGSA is, in the light of *Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation),* inefficacious. In any case, the retention of the clause paramount in section 5 of COGSA does not further the objective of the wider application of the Hague-Visby Rules.

III. JUDICIAL INTERPRETATION OF COGSA - Pragmatic Resolution and Doubts

19. Although *"The Epar"*[26] adopts a pragmatic approach to the resolution of the difficulties surrounding the applicability of the Hague-Visby Rules, the prevailing

view is that the reasoning employed in the case is flawed and it is not unlikely that an appellate court may discountenance the views of the learned judge in *"The Epar"*. Indeed, a High Court judge (as he now is) in Singapore has taken a view different from that which found favour in *"The Epar"*.[27]

20. The legal analysis of the decision and reasoning in *"The Epar"* is set out from paragraph 21 to paragraph 27 of this Report.

21. Despite the textual difficulties of sections 3(1) and 5 of COGSA, the court in *"The Epar"* held that COGSA is to be interpreted in the same way as its English counterpart, namely, the U.K. 1971 Act. That is to say that COGSA is to have the force of overriding law in Singapore. The reasoning of the late Kulasekaram J. in *"The Epar"* ignores the plain language of section 3(1) and instead focuses on the language of Article X of the Hague-Visby Rules.[28] In *"The Epar"*, which concerned a shipment of goods from Singapore, the court appears to have held that Article X of the scheduled Hague-Visby Rules is the relevant provision which renders applicable the Hague-Visby Rules. In other words, despite section 3(1), the application of the Hague-Visby Rules is not confined to shipments out of Singapore.

22. The reason for the court's view that COGSA is to be interpreted as having force of law in Singapore lies in the defendants' contention that since section 3(1) of COGSA states that the Hague-Visby Rules "have effect", the contracting parties were free to contract out of the Hague-Visby Rules. And, according to the defendants, the parties did just that by agreeing to Indonesian law being the applicable law to govern disputes under the bills of lading and to the Court of Djakarta having exclusive jurisdiction to settle any claim arising from the bills of lading. Thus, it was necessary for the court to hold that COGSA is mandatory law for otherwise the court had to recognise that the parties may contract out of the Hague-Visby Rules.[29]

23. Kulasekaram J.'s approach in *"The Epar"* represents a pragmatic resolution of the difficulties arising from section 3(1) of COGSA. In the words of the learned judge, "Such a construction [as contended for by the defendants] will ... be contrary to the stated purpose of the international convention, *viz*., the unification of the domestic laws of the contracting States."[30] It could be said that Kulasekaram J. had adopted the purposive approach well before the enactment of section 9A(1) of the Interpretation Act. For the sake of completeness, it ought to be mentioned that Kulasekaram J. in *"The Epar"* did not refer to section 5 of COGSA.

24. As a matter of legal analysis, however, the reasoning of Kulasekaram J. in *"The Epar"* is seriously flawed. As pointed out by Lord Diplock in *"The Hollandia"*,[31] it is the change in legislative technique (from that employed in the earlier English legislation giving effect to the Hague Rules) which enabled the court to conclude that the U.K. 1971 Act is an overriding mandatory law. As the following passage from Lord Diplock's judgment in *"The Hollandia"* is crucial to the understanding of the point, it is set out *in extenso* below:

> "... certain passages in an article by a distinguished commentator ... supports the view that even a choice of substantive law, which excludes the application of the Hague-Visby Rules, is not prohibited by the [United Kingdom Carriage of Goods by Sea] Act of 1971 notwithstanding that the bill of lading is issued in and is for carriage from a port in, the United Kingdom. The passages to which ... attention was directed ... I find myself ... unable to accept. They draw no distinction between the Act of 1924 and the Act of 1971 despite the contrast in the legislative techniques adopted in the two Acts, and the express inclusion in the Hague-Visby Rules of article X (absent from the Hague Rules), expressly applying the Hague-Visby Rules to every bill of

lading falling within the description contained in that article, which article is given the force of law in the United Kingdom by section 1(2) of the Act of 1971. The Act of 1971 deliberately abandoned what may conveniently be termed the 'clause paramount' technique employed in section 3 of the Act of 1924, the Newfoundland counterpart of which provided the occasion for wide-ranging dicta in the opinion of the Privy Council delivered by Lord Wright in *Vita Food Products Inc. v. Unus Shipping Co. Ltd*. Although the actual decision in that case would have been the same if the relevant Newfoundland statute had been in the terms of the Act of 1971, those dicta have no application to the construction of the latter Act and this has rendered it no longer necessary to embark upon what I have always found to be an unrewarding task of trying to ascertain precisely what those dicta meant."[32]

25. Thus, a scrutiny of the leading judgment of the late Lord Diplock in *"The Hollandia"* reveals that the *raison d'etre* for the decision in that case is the change in the legislative technique adopted in the U.K. 1971 Act. In concluding that the U.K 1971 Act is mandatory and overriding legislation, Lord Diplock relied on the words "shall have the force of law" in section 1(2) of the U.K. 1971 Act. In addition, Lord Diplock also pointed out that the English parliamentary draftsman had dropped the requirement of a clause paramount from the U.K. 1971 Act altogether. In other words, the U.K. 1971 Act is an overriding mandatory law because section 1(2) of the Act (coupled with the legislative technique manifest in the Act) clearly states that "The provisions of the Rules [the Hague-Visby Rules as defined by section 1(1)], as set out in the Schedule to this Act, shall have the force of law."

26. It is sufficient to say that the words "shall have the force of law" do not appear in COGSA. Similarly, COGSA employs the clause paramount technique in section 5.

27. Thus, Kulasekaram J.'s equation of the effect of COGSA with the statutory force of the U.K. 1971 Act is not supported by authority nor by the words used in section 3(1) of COGSA.

28. Lest it be thought that the point has been overlooked, mention should be made of the prefatory words of section 3(1)of COGSA which provide that "Subject to the provisions of this Act, the Rules have effect ...." The difficulty arising from these prefatory words is that the contention may be advanced that since a Schedule to an Act is part of the Act,[33] the result of the prefatory words in section 3(1) is to subjugate, as it were, the text of COGSA to the scheduled Hague-Visby Rules. But this contention, it is submitted, is too artificial and Procrustean in approach. In any case, the entire COGSA is to be construed as a harmonious whole and it would be difficult to justify the view that the scheduled Hague-Visby Rules are to override the text of the Act. Indeed, the opposite view may prevail.

29. Given the difficulties with the reasoning of Kulasekaram J. in *"The Epar"*, it is not surprising that academic writers[34] have criticised the decision. These academic writers have advanced the view that despite the decision in *"The Epar"*, it would still be open to take the position that COGSA and the Hague-Visby Rules scheduled thereto is not a mandatory overriding law.

30. From 1984 (after *"The Epar"* was decided) to 1993, it does not appear from the law reports that there was any challenge to the correctness of the view espoused by Kulasekaram J. in *"The Epar"*. The doubts relating to the correctness of the reasoning employed in *"The Epar"* have, however, been thrown to the fore by the recent decision of Selvam J.C. (as he then was) in *Pacific Electric Wire & Cable Co. Ltd. & Anor. v. Neptune Orient Lines Ltd. (Tokyo Kaiun Kaisha Ltd., third party and Prima Shipping Sdn. Bhd., fourth party)*.[35] In this case, Selvam J.C. opined that:

"The Hong Kong and Singapore Carriage of Goods by Sea Acts which adopt the Hague-Visby Rules continue to employ the 'clause paramount' technique which enables parties to contract out of the Hague-Visby Rules and be governed by the law chosen by the bill of lading: see *Chellaram & Co. Ltd. v. China Ocean Shipping Co.* [1989] 1 Lloyd's Rep. 413 (Sup. Ct. of N.S.W.) where the bill of lading issued at Hong Kong provided for Chinese law. Carruthers J. applying the *Vita Food* case held that the bill of lading had contracted out of the Hague-Visby Rules and that there were no grounds of public policy which would militate against the choice of Chinese law and the incorporation of the liabilities, responsibilities, rights and immunities contained in the Hague Rules."[36]

31. In a later part of his judgment, Selvam J.C. in *Pacific Electric Wire & Cable Co. Ltd. & Anor. v. Neptune Orient Lines Ltd. (Tokyo Kaiun Kaisha Ltd., third party and Prima Shipping Sdn. Bhd., fourth party)* stated that "The Singapore Carriage of Goods by Sea Act has application only to cargo loaded in Singapore and no application to cargo discharged in Singapore."[37] This statement appears to focus on section 3(1) of COGSA and ignores Article X of the Hague-Visby Rules scheduled to COGSA.

32. As different views may be taken of the purport of section 3(1) of COGSA, there is uncertainty surrounding the applicability of the Hague-Visby Rules. Whereas *"The Epar"* takes the position that Article X of the Hague-Visby Rules is the relevant provision which renders applicable the Hague-Visby Rules, *Pacific Electric Wire & Cable Co. Ltd. & Anor. v. Neptune Orient Lines Ltd. (Tokyo Kaiun Kaisha Ltd., third party and Prima Shipping Sdn. Bhd., fourth party)* takes the view that it is section 3(1) of COGSA which renders applicable the Hague-Visby Rules.

33. It would appear from *"The Epar"* and *Pacific Electric Wire & Cable Co. Ltd. & Anor. v. Neptune Orient Lines Ltd. (Tokyo Kaiun Kaisha Ltd., third party and Prima Shipping Sdn. Bhd., fourth party,)* that there is a dichotomy of judicial views in the High Court of Singapore on whether COGSA is an overriding mandatory law. If COGSA is not an overriding mandatory law, parties are free to contract out of the regime of the Hague-Visby Rules.

34. As the reasoning in *"The Epar"* bristles with difficulties, it is not inconceivable for the Court of Appeal to conclude that COGSA is not overriding mandatory legislation. It does not seem likely that a Singapore court may by invoking the purposive approach (see section 9A(1) of the Interpretation Act) conclude that despite the inapt drafting, COGSA is an overriding mandatory law and that Article X prevails over section 3(1) of COGSA. Unless the uncertainty surrounding the applicability of the Hague-Visby Rules and the overriding mandatory nature of COGSA are resolved by legislative means, there is a real possibility that the Court of Appeal may have to rule on the matter. And the Court of Appeal may well decide that the views expressed in *Pacific Electric Wire & Cable Co. Ltd. & Anor. v. Neptune Orient Lines Ltd. (Tokyo Kaiun Kaisha Ltd., third party and Prima Shipping Sdn. Bhd., fourth party)* are correct.

35. Given the desideratum that in the interests of uniformity, the Hague-Visby Rules which is an international convention should be construed on broad principles of general acceptation,[38] it behoves Singapore to amend and/or clarify COGSA to enable the stated purpose of the Hague-Visby Convention, *viz.*, the unification of domestic laws of the contracting States relating to bills of lading, to be achieved. Indeed, there is every urgency for COGSA to be amended as the view may be taken that COGSA as presently worded[39] does, or may, not require a Singapore court to apply the Hague-Visby Rules to shipments covered by bills of lading out of another contracting State.[40]

36. For the reasons set out in the foregoing paragraphs, the Sub-committee is of the opinion that the uncertainty surrounding the applicability of the Hague-Visby Rules and the overriding mandatory nature of COGSA should be resolved by legislative amendments to COGSA instead of leaving the matter in the hands of the judiciary.

IV. SUGGESTED AMENDMENTS TO SECTIONS 3 & 5 OF COGSA

37. It is suggested that section 3(1) of COGSA be repealed and be replaced (with the necessary modifications) by the words used in section 1(2) of the U.K. 1971 Act. The advantage of this approach is that since there is already case law on the import of section 1(2) of the U.K. 1971 Act, there is no uncertainty in the application of the Hague-Visby Rules. Indeed, in *"The European Enterprise"*,[41] Steyn J. (as he then was) stated that the expression "force of law" in the context of section 1(2) of the U.K. 1971 Act means having "mandatory statutory force."[42]

38. It is worthy of note that the U.K. 1971 Act contains section 1(3) which provides as follows:

> "Without prejudice to subsection (2) above, the said provisions shall have effect (and have the force of law) in relation to and in connection with the carriage of goods by sea in ships where the port of shipment is a port in the United Kingdom, whether or not the carriage is between ports in two different States within the meaning of Article X of the Rules."

39. The presence of section 1(3) in the context of the U.K. 1971 Act is comprehensible since the United Kingdom is a large territory with many ports located in different parts of the country. One may well imagine the carriage of goods from Liverpool to London or from Bristol to Portsmouth. In such a case, since Article X of the Hague-Visby Rules refer to contracting States, it may well be thought that the Hague-Visby Rules do not have the force of law with regard to carriage of goods by sea between two ports situate in the same contracting State. Hence the enactment of section 1(3) of the U.K. 1971 Act. However, in the context of the United Kingdom, it has been pointed out that section 1(3) of the U.K. 1971 Act is "unlikely to have any wide commercial importance, because it is rare for a contract of carriage on coastal sea carriages to require a bill of lading."[43]

40. In the context of Singapore, one wonders whether there is a need to provide for the eventuality of carriage of goods by sea between two Singapore ports. However, it is conceivable that the development of outlying islands like the Southern Islands might - in the fullness of time - be accompanied by the development of ports on these islands. The development of ports in these islands might lead to the carriage of goods by sea from a port located on Singapore island to a port located on one of these islands or *vice versa*. However, the crucial question which would still arise is whether in respect of such carriage of goods (from one Singapore port to another Singapore port), a bill of lading[44] would be issued or be intended to cover the carriage? The answer to this question must necessarily depend on commercial practices as dictated by commercial considerations.

41. The Sub-committee understands[45] that bills of lading[46] are issued[47] in respect of sea carriages between two oil terminals[48] in Singapore. In respect of such carriages, the Hague-Visby Rules should have the force of law. This is, in fact, the position in the United Kingdom. An examination of the legislative scheme of the U.K. 1971 Act (in particular, sections 1(3), 1(4), and l(6)(b)) reveals that the English approach is to subject English coasting trade to the regime of the Hague-Visby Rules whenever the carriage of the goods by sea is covered by a bill of lading or a similar document of

title or "any receipt which is a nonnegotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods by sea which expressly provides that the [Hague-Visby] Rules are to govern the contract as if the receipt were a bill of lading".[49]

42. The Sub-committee takes the view that given the potential development of ports on outlying islands belonging to Singapore, it would be desirable to replicate (with the necessary modifications) section 1(3) of the U.K. 1971 Act in COGSA.

43. Consistent with the change in legislative technique referred to in paragraph 23 above,[50] it is suggested that section 5 of COGSA be repealed in its entirety. However, since it is section 5 of COGSA which circumscribes[51] the application of the Hague-Visby Rules by stipulating that the Rules apply to every bill of ading or similar document of title issued in Singapore, there is a need to provide that the Hague-Visby Rules apply only where bills of lading[52] or similar documents of title are issued in Singapore. To this end, it is suggested that section 1(4) of the U.K. 1971 be replicated (with the necessary modifications) in COGSA. The wording adopted in section 1(4) of the U.K. 1971 Act makes it clear that the Hague-Visby Rules apply to the situation where no bill of lading is actually issued as long as the contracting parties contemplate' that the contract of carriage is to be covered by a bill of lading. This was the situation in *Pyrene Co. Ltd.* v. *Scindia Steam Navigation Co. Ltd.*[53] where the court held that the Hague Rules applied notwithstanding that a bill of lading was never actually issued.

44. Since a replication of section 1(4) of the U.K. 1971 Act imports a reference to section 1 (6) of the U.K. 1971 Act, it is suggested that section 1 (6) of the U.K. 1971 Act be replicated in COGSA. The object of section l(6)(a) of the U.K. 1971 Act is to clarify that with regard to a bill of lading which expressly provides that the Hague-Visby Rules shall govern the contract, the Hague-Visby Rules shall have the force of law. Indeed, Article X(c) of the Hague-Visby Rules covers much the same ground as section l(6)(a) of the U.K. 1971 Act. However, the inclusion of the matter covered by Article X(c) of the Hague- Visby Rules in the text of the legislation makes it clear beyond peradventure that in such a situation, the Hague-Visby Rules continue to have the force of law. With regard to section l(6)(b) of the U.K. 1971 Act, the provision is dealing with a situation where a carrier voluntarily incorporates a clause into a non-negotiable receipt which provides that the Hague-Visby Rules are to govern the contract of carriage. Thus, the contractual incorporation of the Hague-Visby Rules will result in the Hague-Visby Rules having the force of law. In the words of Sir Sebag Shaw in *"The Morviken"*,[54] "The consensual tie is reinforced by this provision [section 1(6) of the U.K. 1971 Act] which, in effect, confers on the primary contractual bond a statutory binding character."[55] Again, a replication of section 1(6) of the U.K. 1971 Act will enable a Singapore court to reap the benefits of English litigation on its interpretation. Admittedly, as matters presently stand, the English cases[56] on the import of section l(6)(b) of the U.K. 1971 Act do not speak with one voice. But a Singapore court is certainly free to choose which view it intends to adopt.

45. It is also suggested that section 1(7) of the U.K. 1971 Act be replicated in COGSA. The purpose of section 1(7) of the U.K. 1971 Act is, as a matter of convenience, to deal with the matter covered by Article I(c) of the Hague-Visby Rules in the text of the legislation.

46. Following from the aforesaid suggested amendments to COGSA, a consequential amendment to COGSA will be required. That consequential amendment is the retention and renumbering of what is presently section 3(2) of COGSA.

47. The Sub-committee has prepared a Bill (with explanatory statement) setting forth the amendments to COGSA as suggested in this Report. The Bill is annexed to this Report.

V. WHETHER AMENDMENTS TO COGSA SHOULD BE RETROSPECTIVE

48. One issue which arises from the suggested amendment to section 3 of COGSA is the impact of the amendment on transactions entered into before the effective date of the amending legislation. This is the issue of whether any suggested amendment to section 3 of COGSA should be retrospective in effect. In a sense, this issue would not arise if Kulasekaram J.'s view in *"The Epar"* is accepted as representing the law. However, as demonstrated above, the reasoning in *"The Epar"* is inconsistent with, first, that adopted by the House of Lords in *"The Hollandia"* and secondly, the text of section 3(1) of COGSA.

49. Given the doubts generated by Selvam J.'s (as he now is) views in *Pacific Electric Wire & Cable Co. Ltd. & Anor. v. Neptune Orient Lines Ltd. (Tokyo Kaiun Kaisha Ltd., third party and Prima Shipping Sdn. Bhd., fourth party)*, it is suggested that any amendment to COGSA be in a form that vindicates the position as stated by Kulasekaram J. in *"The Epar"*. To this end, COGSA should be amended to include section 3(8) which states that "It is hereby declared that this section with the exception of subsections (5) and (6) has had effect from 16th January 1978."[57]

50. The retrospective effect of the proposed amendment to section 3 of COGSA will not entail difficulties to the shipping community in Singapore since the Sub-committee understands[58] that the shipping community in Singapore proceeds on the assumption[59] that the Hague-Visby Rules apply to carriages of goods by sea covered by bills of lading[60] from Singapore to Malaysian ports.

51. The wording of the proposed section 3(8) of COGSA will ensure that Singapore is not perceived as having failed to honour her international obligation of enacting a national law to give effect to the Hague-Visby Convention. Singapore is committed to give statutory force to the Hague-Visby Convention as she acceded to the Hague-Visby Convention on 25 April 1972. The exception expressed in the proposed section 3(8) of COGSA is to ensure that previous transactions are not affected by the extension of the Hague-Visby Rules (in the circumstances spelt out in the proposed section 3(4)(a) and (b)) to the carriage of deck cargo and live animals.

VI. SECTION 6 - A RELIC OF TIME PAST?

52. There exists in COGSA, a provision, namely section 6, which excludes the operation of the Hague-Visby Rules in two situations set out in section 6(a) and (b) That is to say, the Hague-Visby Rules do not apply in relation to:

(a) carriage of goods by sea in sailing ships carrying goods from any Singapore port to any other port (whether in or outside Singapore), and

(b) the carriage of goods by sea in ships carrying goods from any Singapore port to any other port in Singapore or to any port in Malaysia, provided always that "no bill of lading has been issued or shall be issued and that the agreed terms of the contract for the carriage of goods shall be embodied in a receipt which shall be a non-negotiable document and marked as such."[61]

53. By expressly disapplying the proviso to Article VI of the Hague-Visby Rules, section 6 of COGSA makes it clear that *ordinary commercial shipments made in the ordinary course of trade from and to the ports mentioned in section 6(a) and (b)*[62] are not

subject to the international regime of rights and liabilities imposed by the Hague-Visby Rules provided always that the two conditions in Article VI of the Hague-Visby Rules are complied with. The two conditions referred to in Article VI are:

(1) that no bill of lading has been or shall be issued, and

(2) that the terms agreed upon between the parties shall be embodied in areceipt which shall be a non-negotiable document and shall be marked as such.

54. It has been said that non-compliance with any of the two conditions in Article VI results in the inapplicability of Article VI, and therefore the applicability - where the carriage of goods is covered by a bill of lading or similar document of title - of the Hague-Visby Rules.[63]

55. It is relevant to state that the U.K. 1971 Act does not contain a provision equivalent or similar to section 6 of COGSA.

56. The question which arises is whether section 6 of COGSA should be retained. Strictly speaking, the existence of section 6 is not consistent with Singapore's international obligation to give full effect to the Hague-Visby Convention in the sense that the Hague-Visby Convention does not permit contracting States to make reservations in the nature of section 6.

57. In considering whether section 6 of COGSA should be retained, it is relevant to examine the legislative history of section 6 of COGSA. The present section 6 of COGSA was originally section 5 of the Carriage of Goods by Sea Ordinance, 1927.[64] The original reason for the existence of section 5 of the Carriage of Goods by Sea Ordinance, 1927[65] is well documented in the proceedings of the Straits Settlements Legislative Council leading to the enactment of the Carriage of Goods by Sea Ordinance, 1927. In introducing the Bill for the Carriage of Goods by Sea Ordinance, the then Attorney-General, Mr. M.H. Whitley made the following comments on section 5:

> In clause 5 there is an important exception to the general principles of the Bill. It is recognised that the uniform application of those principles may cause grave inconvenience to local trade. The liberty, therefore, which is granted in certain cases by Article VI to the parties to enter into a special agreement in respect of particular goods to be evidenced by a receipt instead of a bill of lading, is extended in the case of local trade to all goods. Local trade is expressed to be trade from any port in the Colony to any other port in the Colony or to a port in a State in the Malay Peninsula under British protection.[66] It is a practical question for the Council whether those limits are wide enough. The limits should be as narrow as possible, consistent with the requirements of local trade. Under the Carriage of Goods by Sea Act, 1924, the exception relates to goods shipped from any port in Great Britain or Northern Ireland to any other port in Great Britain or Northern Ireland or to any port in the Irish Free State. In India,[67] *the exception relates to goods carried in sailing ships from any port in British India to any other port whether in British India or elsewhere,*[68] and to goods shipped from a port in British India to be notified in the Gazette to a port in Ceylon also to be notified in the *Gazette*."[69]

58. As was pointed out by the then Attorney-General of the Straits Settlements, section 5(a) of the Carriage of Goods by Sea Ordinance, 1927 was inspired by the equivalent provision in the Indian Carriage of Goods by Sea Act, 1925.[70] As for section 5(b) of the Carriage of Goods by Sea Ordinance, 1927, the Straits Settlements Government sought views from the business community on the form that the exception should take.[71] As the minutes of the Legislative Council meeting held on 13 December 1926

show, there was a division of opinion between the Singapore Chamber of Commerce and the Penang Chinese Chamber as to the desirability of having clause 5(b) in the Carriage of Goods by Sea Ordinance, 1927.[72] However, after consideration of the various representations, the Legislative Council agreed on a compromise version[73] of clause 5(b) which was eventually enacted as section 5(b) of the Carriage of Goods Ordinance, 1927. It is evident that the compromised version reflected the thinking of the business community at that time that the coasting trade of the Colony of the Straits Settlements (which included Penang and Malacca) should not be subject to the international regime of rights and liabilities imposed by the Hague Rules. Further, the operation of the Hague Rules were also excluded in relation to local trade from a port in the Straits Settlements to any port in any State in the Malay Peninsula which was under British protection (provided always that the two conditions in Article VI of the Hague Rules were complied with).[74]

59. Inasmuch as section 5 of the Carriage of Goods by Sea Ordinance, 1927 excluded the local trade (in the sense of trade between ports in the Straits Settlements and a port in any state in the Malay Peninsula which was under British protection) and coasting trade (in the sense of trade between ports in the Straits Settlements), it achieved the same purpose as section 4 of the United Kingdom Carriage of Goods by Sea Act, 1924.[75] It is apparent that the purpose of ection 5(b) of the Carriage of Goods by Sea Ordinance, 1927 was to ensure that local trade and the coasting trade of the Colony of the Straits Settlements may 210not suffer "grave inconvenience" by reason of the adoption of the Hague Rules.

60. When COGSA was drafted, it would appear that section 5 of the Carriage of Goods by Sea Ordinance, 1927 was retained in its entirety (save for a modification to paragraph (b) thereof) and renumbered the provision as section 6.[76] By modifying the language of section 6(b) in COGSA, the scope of the exception has been enlarged as the exception was originally conceived as relating only to the coasting trade of a Colony and local trade between the Colony and ports located in territories under the protection of the colonial masters. The modification to section 6(b) has resulted in parties being able to exclude the operation of the Hague-Visby Rules in relation to the carriage of goods by sea in ships carrying goods from any port in Singapore to any other port in Singapore or to any port in Malaysia provided always that the two conditions in Article VI of the Hague-Visby Rules are complied with.[77]

61. Two questions arise from the presence of section 6 in COGSA. First, is the exception relating to sailing ships referred to in section 6(a)[78] of any real significance in present day Singapore? The Sub-committee understands[79] that sailing ships are still used for commercial shipments from Indonesia to Singapore. The use of sailing ships from Indonesian ports to Singapore is at present confined to barter trade and cargo imported and exported in these sailing ships is regarded as unmanifested cargo. Although cargo is loaded onto these sailing ships for carriage from Singapore to Indonesian ports, bills of lading are not normally issued in respect of the cargo carried in these sailing vessels. In this connection, it is relevant to state that in British India, the exception in section 5(a) of the Indian Carriage of Goods by Sea Act, 1925 with regard to sailing ships, came into being because it was not the practice (at least in 1925) for sailing ships engaged in the coasting trade or proceeding from Indian ports to issue bills of lading.[80]

62. Secondly, does retention of section 6 (especially that part of section 6(a) which deals with carriage of goods in sailing vessel from a Singapore port to another port; and that part of section 6(b) which deals with carriage of goods from a port in Singapore to a port in Malaysia) mean that Singapore has failed to honour her international

obligation as a contracting State to the Hague-Visby Convention? The Sub-committee is of the view that the answer is in the negative in so far as the exceptions in section 6(a) and (b) are founded on the non-issuance of bills of lading or other similar documents of title. The point being that to fall within Article VI of the Hague-Visby Rules (to which section 6(a) and (b) of COGSA relate), the terms of the contract of carriage must be embodied in a non-negotiable receipt marked as such and no bill of lading is to be issued[81] in respect of carriage of the goods by sea.

63. The Sub-committee is of the view that the presence of section 6(a) in COGSA is incongruent with the scheme of the Hague-Visby Rules. If the object of section 6(a) is to modify Article VI of the Hague-Visby Rules, it is unnecessary because the Hague-Visby Rules are, by their own terms, inapplicable to the carriage of goods by sea not covered by bills of lading or similar documents of title. Given that section 6(a) is incongruent and otiose, the Sub-committee recommends the repeal of section 6(a) of COGSA.

64. As regards section 6(b), any decision on its retention or repeal must take into account the commercial practices of those engaged in the carriage of goods by sea from Singapore to Malaysian ports. From consultative meetings held with the relevant business community,[82] the Sub-committee through the office of the Trade Development Board has been able to establish that the carriage of goods by sea from Singapore to Malaysian ports is covered by bills of lading and that the relevant business community appears to have taken the view that in respect of such carriage of goods by sea, the Hague-Visby Rules apply as a matter of law. Since bills of lading are issued for the carriage of goods by sea from Singapore to Malaysian ports, the Hague-Visby Rules will apply in respect of such carriage of goods by sea notwithstanding section 6(b) of COGSA.

65. There does not appear to be any commercial consideration which requires that the carriage of goods by sea from Singapore to Malaysian ports be exempt from the operation of the Hague-Visby Rules. Where the carriage of goods from Singapore to a Malaysian port is not covered by a bill of lading or a similar document of title, the Hague-Visby Rules by their own terms provide that the Hague-Visby Rules are inapplicable.

66. The Sub-committee is of the view that section 6(b) of COGSA should be repealed. Section 6(b) is unnecessary if its object is to exclude the application of the Hague-Visby Rules to a situation where goods carried by sea (from Singapore to Malaysian ports) are not covered by bills of lading or similar documents of title since the Hague-Visby Rules by their own terms provide that the Rules shall not apply where goods carried by sea are not covered by bills of lading or similar documents of title.

67. The repeal of section 6(b) of COGSA will result in Article VI of the Hague-Visby Rules being applicable only to the carriage of particular goods where no bills of lading are issued and where the terms of the carriage are embodied in a non-negotiable receipt marked as such.

68. However, if section 6(b) is retained in COGSA, it must be borne in mind that the proposed amendment to section 3, namely, the addition of section 3(4) will have an impact on section 6(b). The proposed section 3(4)(b) provides that the Hague-Visby Rules "shall have the force of law in relation to any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract

of carriage of goods by sea which expressly provides that the Rules are to govern the contract as if the receipt were a bill of lading."[83]

69. Both section 6(a) and (b) of COGSA are superfluous as the Hague-Visby Rules will not, in any case, apply to contracts of carriage of goods by sea not covered by bills of lading or similar documents of title. Perhaps, this is the reason for the absence of equivalent provisions in the U.K. 1971 Act. In the interest of rationalising the statutory law, the Sub-committee takes the view that section 6 is to be repealed in its entirety.

Dated this 31st day of August 1994

Charles Lim Aeng Cheng, Chairman

Miss Toh Hwee Lian, Secretary

Lawrence Boo

David Chong Gek Sian

Ms. Pek Siok Lan

Phua Wee Chuan

Sin Boon Ann

Ms. Tan Beng Tee

Tay Thiam Peng

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1. Chapter 33, 1985 Revised Edition of Singapore Statutes.

2. See Parliamentary Debates, Republic of Singapore, Official Report, Vol. 32 at column 348. The first reading of the bill was on 24 October 1972, see Parliamentary Debates, Republic of Singapore, Official Report, Vol. 32 at column 162. The second and third readings of the Bill took place on 3 November 1972.

3. See Parliaentary Debates, Republic of Singapore, Official Report, Vol. 32 at columns 347 and 348.

4. The said Interpretation (Amendment) Act 1993 came into force on 16 April 1993.

5. See *Raffles City Pte. Ltd. v. The Attorney General* [1993] 3 S.L.R. 580 at 586 and 587 where Thean J. (as he then was) observed that section 9A of the Interpretation Act is a declaratory enactment and permits the courts, in appropriate cases, to have recourse to

additional materials to ascertain the meaning of a statutory provision. It suffices to say that the view of Thean J. on the declaratory nature of section 9A of the Interpretation Act has been endorsed by the Singapore Court of Appeal. See *Comptroller of Income Tax v. GE Pacific Pte. Ltd.*, Civil Appeal No. 190 of 1993, judgment delivered on 1 July 1994. Apart from section 9A of the Interpretation Act, the court may, in appropriate circumstances, also refer to ministerial statements made during Parliamentary debates giving reasons for the enactment of a particular Act of Parliament. See *Tan Boon Yong v. Comptroller of Income Tax* [1993] 2 S.L.R. 48 where the Singapore Court of Appeal followed the English approach laid down in *Pepper (Inspector of Taxes) v. Hart* [1992] 3 W.L.R. 1032.

6. A contracting State is a State which has ratified and/or acceded to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924, as amended by the Brussels Protocol of 1968.

7. Elizabeth II c. 19.

8. Singapore acceded to the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, 1924 (introducing the international regime of liabilities, rights and immunities in connection with the carriage of goods by sea known as the Hague Rules) on 2 June 1930 (by the accession of Great Britain) and by her own accession on 9 August 1965. The local law which gave effect to the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, 1924 is the Carriage of Goods by Sea Ordinance, 1927 (Ordinance No. 4 of 1927) as set out in The Straits Settlements Government Gazette Index 1927, Vol. II, at p. 689.

9. The Bill became the Carriage of Goods by Sea Ordinance, 1927 (Ordinance No. 4 of 1927) which was passed at a meeting of the Straits Settlements Legislative Council held on 21 March 1927 and was assented to by His Excellency, the Governor of the Straits Settlements, Sir Laurence Nunns Guillemard on 20 April 1927. By section 2(2) of the Carriage of Goods by Sea Ordinance, 1927, the effective date for the application of the Hague Rules was on a date (not earlier than 1st July 1927) to be appointed by the Governor in Council and notified in thc *Gazette*.

10. Minutes of the Straits Settlements Legislative Council meeting held on 11 October 1926 reported at The Straits Settlements Government Gazette Index 1926, Vol. IV, Supplement to the Straits Settlements Government Gazette dated 29 October 1926 at p. 16.

11. As to the import of the expression, see *Comalco Aluminium Ltd. v. Mogal Freight Services Pty. Ltd.* [1993] 113 A.L.R. 677 where Sheppard J. held that a consignment note (issued by a freight forwarder) having all the three attributes of a bill of lading was either a bill of lading albeit not described as one and/or a similar document of title falling within that expression as used in the Commonwealth Sea-Carriage of Goods Act 1924. See also *Hugh Mack & Co. Ltd. v. Burns & Laird Lines Ltd.* (1944) 77 Lloyd's L.L. Rep. 377 at 383 where Andrews L.C.J. of the Court of Appeal of Northern Ireland opined that a received bill of lading fell within the expression "similar document of title".

12. In this Report, whenever mention is made of a contract of carriage by sea covered by a bill of lading, it is intended also to refer to a contract of carriage covered by a similar document of title.

13. See, *supra*, note 6.

14. As for transhipment cargo and the applicability of the Hague-Visby Rules, see *Mayhew Foods Ltd. v. Overseas Containers Ltd.* [1984] 1 Lloyd's Rep. 317 and *Captain v. Far Eastern Steamship Co.* [1979] 1 Lloyd's Rep. 595.

15. Singapore's obligation to give full effect to the Hague-Visby Convention arises from her accession to the Hague-Visby Convention on 9 August 1965. See also, *supra*, note 8.

16. [1939] A.C. 277.

17. Emphasis added. The emphasis is to draw attention to the fact that whereas the Newfoundland statute contained the imperative word "shall", section 3(1) of COGSA does not employ the word "shall". Nonetheless, the Privy Council was not persuaded that the word "shall" rendered the Hague Rules mandatory in the sense that they could not be contracted out of.

18. The provision read as follows: "Every bill of lading or similar document of title issued in this Dominion which contains or is evidence of any contract to which the rules apply shall contain an express statement that it is to have effect subject to the provisions of the said rules as expressed in this Act."

19. The Newfoundland Carriage of Goods by Sea Act, 1932 was enacted to give statutory force to the Hague Rules in Newfoundland.

20. See, in particular, Dr. F. A. Mann in his article, *"Statutes and Conflict of Laws"* in (1972-73) 46 B.Y.I.L. 117, 121-126.

21. See *"The Implementation of Private Law Conventions in English Law: The Example of the Hague Rules"*, Butterworths Lectures 1990-91, p. 1 from pp. 4 to 9.

22. As a matter of historical accuracy, it is relevant to point out that at the time of the decision in *Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation)*, the expression "overriding mandatory rule" of the forum was not yet in use.

23. This is unassailably correct, see *In re Missouri Steamship Co.* (1888) 42 Ch. D. 321, *Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation)* [1939] A.C. 277 and *Pacific*

Electric Wire & Cable Co. Ltd. & Anor. v. Neptune Orient Lines Ltd. (Tokyo Kaiun Kaisha Ltd., third party and Prima Shipping Sdn. Bhd., fourth party) [1993] 3 S.L.R. 60. See also. F.M.B. Reynolds in *"The Implementation of Private Law Conventions in English Law: The Example of the Hague Rules"*, Butterworths Lectures 1990-91, p. 1 at pp. 5 and 6.

24. See Vita Food Products Incorporated v. Unus Shipping Co. Ltd. (In Liquidation)[1939] A.C. 277 at 288. See also "The Hollandia"[1983] A.C. 565 at 577G.

25. Moreover, there does not appear to be any sanction for failure and/or omission to include the clause paramount in bills of lading. It seems highly unlikely that section 225C of the Penal Code, Chapter 224, 1985 Revised Edition of the Singapore Statutes, is the sanction which was intended for non-compliance with section 5 of COGSA. Section 225C of the Penal Code provides that "Whoever does anything which by any law in force in Singapore he is prohibited from doing, or omits to do anything which he is so enjoined to do, shall, when no special punishment is provided

by the law for such commission or omission, be punished with fine not exceeding $200."

26. [1985] 2 M.L.J. 3.

27. See *Pacific Electric Wire & Cable Co. Ltd. & Anor. v. Neptune Orient Lines Ltd. (Tokyo Kaiun Kaisha Ltd., third party and Prima Shipping Sdn. Bhd., fourth party)* [1993] 3 S.L.R. 60.

28. [1985] 2 M.L.J. 3 at 7.

29. Although the bills of lading in *"The Epar"* were issued in Singapore and thus fell within section 3(1) of COGSA, that fact alone would not have mandated that the Hague-Visby Rules applied as a matter of overriding mandatory law to the contracts of carriage covered by the bills of lading.

30. [1985] 2 M.L.J. 3 at 7.

31. [1983] A.C. 565. The case is also reported as *"The Morviken"* at [1983] 1 Lloyd's Rep. 1.

32. [1983] A.C. 565 at 577 and 578.

33. See section 5 of the Interpretation Act, Chapter 1 of the 1985 Revised Edition of the Singapore Statutes.

34. See Tan Lee Meng on *The Law in Singapore on Carriage of Goods by Sea* (1986 Ed.) at pp. 206 to 210; F.M.B. Reynolds in *"Singapore and the Visby Rules"* (1985) 6 Sing. L. R. 163 at 168 and 169; and Geethangani Rodrigo in *"Application of the Hague-Visby Rules in Singapore"* (1985) 27 Mal. L.R. 197 at 199 *et seq.*

35. [1993] 3 S.L.R. 60.

36. *Ibid*., at 68.

37. *Ibid*. For the sake of completeness, it must be pointed out that Selvam J.C.'s reference to the Hong Kong Carriage of Goods by Sea Act as employing the 'clause paramount' technique is incorrect. A perusal of the Laws of Hong Kong, Volume 29, Appendix II (1989 Revised Edition, at p. 7 thereof) reveals that the United Kingdom Carriage of Goods by Sea Act 1971 was extended to Hong Kong by Statutory Instrument No. 1508 of 1980. Statutory Instrument No. 1580 of 1980 extends the U.K. 1971 Act in it entirety (including section 1(2) thereof) to Hong Kong and repealed the Carriage of Goods by Sea Ordinance, Laws of Hong Kong (1964 Revised Edition, Chapter 46) which had given effect to the Hague Rules in Hong Kong. The extension of the U.K. 1971 Act to Hong Kong means that the law in Hong Kong is the same as that which obtains for the United Kingdom. Thus, it is respectfully submitted that Carruthers J. in *Chellaram & Co. Ltd. v. China Ocean Shipping Co*. was in error when he stated that the Hague-Visby Rules in Hong Kong did not apply as a matter of mandatory law as there was no statutory provision similar to section 1(2) of the U.K. 1971 Act. Similarly, it is respectfully submitted that Selvam J.C., in so far as he had relied on Carruthers J.'s view in *Chellaram & Co. Ltd. v. China Ocean Shipping Co*. as stating the relevant law in Hong Kong, was also in error. Carruthers J.'s error in *Chellaram & Co. Ltd. v. China Ocean Shipping Co*. may well be attributable to counsel's failure in that case to raise the effect of the United Kingdom Statutory Instrument No. 1508 of 1980.

38. *Per* Lord Macmillan in *Stag Line Ltd. v. Foscolo. Mango and Co. Ltd.* [1932] A.C. 328 at 350 in the context of the Hague Rules.

39. Sections 3(1) and 5.

40. The purpose of Article X in the Hague-Visby Rules is to, *inter alia*, clarify that the Rules shall apply to every bill of lading relating to the carriage of goods between two ports in two different States if the bill of lading is issued in a contracting State or if the carriage is from a port in a contracting State.

41. [1989] 2 Lloyd's Rep. 185.

42. *Ibid*., at 188.

43. See Halsbury's Statutes, Fourth Edition (1988), Vol. 39 under the chapter on *"Shipping and Navigation"* at p. 833.

44. The point being that the Hague-Visby Rules only apply to contracts of carriage of goods by sea covered by a bill of lading. See *Pyrene Co. Ltd. v. Scindia Steam Navigation Co. Ltd.* [1954] 2 Q.B. 402 and *"The Captain Gregos"* [1990] I Lloyd's Rep. 310 at 317 and 318.

45. From enquiries made by the Trade Development Board. These inquiries were made at consultative meetings held with representatives from the relevant business community comprising oil traders, oil suppliers and vessel operators. The representatives from thc industry which participated at these consultative meetings included thc Singapore National Shipping Association, Singapore Petroleum Company Ltd., Vitol Asia Pte. Ltd., Neptank Bunkering *Services* Pte. Ltd. and Global Energy (Asia) Pte. Ltd.

46. Article I(b) of the Hague-Visby Rules defines, for the purpose of application of the Rules, the expression "contract of carriage" as referring to contracts of carriage covered by a bill of lading *or any similar document of title.* Emphasis added.

47 Or intended to be issued - see *Pyrene Co. Ltd. v. Scindia Steam Navigation Co. Ltd.* [1954] 2 Q.B. 402.

48. The proposed amendment to COGSA retains the use of the word "port". In layman terms, the word "port" may not be apt to describe an oil terminal. However, given the definition of "port" in the Port of Singapore Authority Act, Chapter 236 of the 1985 Revised Edition of Singapore Statutes, it is the Sub-committee's view that the word "port" includes oil terminals. It suffices to say that section 2 of the Port of Singapore Authority Act defines "port" as meaning "any place in Singapore and any navigable river or channel leading into such place declared to be the port under section 3." Section 2(1) of the Merchant Shipping Act, Chapter 179, 1985 Revised Edition of Singapore Statutes defines "port" in the same way as that word is defined in the Port of Singapore Authority Act.

49. These are the statutory words appearing in section l(6)(b) of the U.K. 1971 Act.

50. See also the passage of Lord Diplock's judgment in *"The Hollandia"* reproduced as the text to note 32.

51. See *"The European Enterprise"*[1989] 2 Lloyd's Rep. 185 at 188. This is also the view of the effect of the equivalent provision (namely, section 4(1)) in the Australian Commonwealth Sea- Carriage of Goods by Sea Act 1924. See *Comalco Aluminium Ltd.* v. *Mogal Freight Services Pty. Ltd.* (1993) 113 A.L.R. 677 at 695 and 696.

52. As Slade L.J. pointed out in *"The Captain Gregos"* [1990] 1 Lloyd's Rep. 310 at 317 and 318, "As section 1(4) of the [U.K. 1971] Act and Articles I(b) and X or the [Hague-Visby] Rules make clear, the bill of lading is the bedrock on which this mandatory code is founded"

53. [1954] 2 Q.B. 402.

54. [1982] 1 Q.B. 872.

55. *Ibid.,* at 885G.

56. See *"The European Enterprise"* [1989] 2 Lloyd's Rep. 185 and *"The Vechscroon"* [1982] 1 Lloyd's Rep. 301.

57. For an example where a similar legislative solution was adopted, see section 58(2) of the Insurance Act, Chapter 142, 1985 Revised Edition of the Singapore Statutes, where it is provided that the sub-section "shall be deemed always to have had effect".

58. From enquiries made by the Trade Development Board. See, *supra,* note 45.

59. It may be that the decision in *"The Epar"* was instrumental in giving rise to the assumption.

60. Or similar documents of title.

61. These are the words used in the final part of the first sentence of Article VI of the Hague-Visby Rules.

62. Emphasis added.

63. See *Indian Shipping Industry Ltd. v. Dominion of India* (1953) A.I.R. Bombay 396 at 400, where the Bombay High Court held that Article VI of the Hague Rules enables two contracting parties to contract out of the Hague Rules in respect of the carriage of any class of goods provided two conditions are fulfilled: (1) that no bill of lading has been or shall be issued, and (2) that the terms agreed upon between the parties shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. It is to be borne in mind that where a non-negotiable receipt marked as such expressly provides that the contract of carriage of goods contained in it or evidenced by it is governed by the Hague-Visby Rules as if the receipt were a bill of lading, the replicated section l(4)(b) of the U.K. 1971 Act (as to which, see paragraph 41 of this Report) will render the Hague-Visby Rules applicable (and having the "force of law") to the said contract of carriage contained in or evidenced by the non-negotiable receipt marked as such. See *"The European Enterprise"* [1989] 2 Lloyd's Rep. 185 and *"The Vechscroon"* [1982] 1 Lloyd's Rep. 301.

64. Ordinance No. 4 of 1927 as set out in The Straits Settlements Government Gazette Index 1927, Vol. II, at p. 689. In COGSA, a separate section (namely, section 2) appears for the purpose of defining "the Rules" referred to in the Act.

65. Which gave statutory force to the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, 1924.

66. This was the original wording of clause 5 of the Bill. Representations from the business community led to certain changes to the wording of clause 5 and the amended clause 5 appears as section 5 of the Carriage of Goods by Sea Ordinance, 1927. See the minutes of the Legislative Council meetings held on 13 December 1926

and 7 February 1927 reported at The Straits Settlements Government Gazette Index 1926, Vol. IV, Supplement to the Straits Settlements Government Gazette dated 24 December 1926 at p. 12 and The Straits Settlements Government Gazette Index 1927, Vol. I, Supplement to the Straits Settlements Government Gazette dated 4 March 1927 at pp. 23 and 24 respectively.

67. The Indian Carriage of Goods by Sea Act, 1925, Act XXVI of 1925.

68. Emphasis added.

69. Minutes of the Straits Settlements Legislative Council meeting held on 11 October 1926 reported at The Straits Settlements Government Gazette Index 1926, Vol. IV, Supplement to the Straits Settlements Government Gazette dated 29 October 1926 at p. 16.

70. The Report of the Joint Committee on the Indian Carriage of Goods by Sea Bill stated that it was the desire of the Indian mercantile community that the bills of lading issued by steamship companies engaged in the Indian coasting trade be subject to the Hague Rules. It would appear that whereas in the English coasting trade, it was rare for bills of lading to be issued, the contrary was the case in the Indian coasting trade. It was also the finding of the Joint Committee on the Indian Carriage of Goods by Sea Bill that it was not the practice for sailing vessels engaged in the Indian coasting trade or proceeding from Indian ports to issue bills of lading. Hence, the text of section 5(a) of the Indian Carriage of Goods by Sea Act, 1925. See *THE AIR MANUAL OF UNREPEALED CENTRAL ACTS*, 5th Ed. (1989), Vol. 3, at p. 399.

71. The proceedings of the Straits Settlements Legislative Council clearly show that the views of the business community were sought on the wording of clause 5 of the Bill. See the minutes of the Legislative Council meetings held on 1 November 1926 and 13 December 1926 which are reported at The Straits Settlements Government Gazette Index 1926, Vol. IV, Supplement to the Straits Settlements Government Gazette dated 3 December 1926 at p. 8 and Supplement to the Straits Settlements Government Gazette dated 24 December 1926 at p. 12 respectively. See also the minutes of the Legislative Council meeting held on 7 February 1927 reported at The Straits Settlements Government Gazette Index 1927, Vol. 1, Supplement to the Straits Settlements Government Gazette dated 4 March 1927 at pp. 23 and 24.

72. See The Straits Settlements Government Gazette Index 1926, Vol. IV, Supplement to the Straits Settlements Government Gazette dated 24 December 1926 at p. 12.

73. See the minutes of the Legislative Council meeting held on 7 February 1927 reported at The Straits Settlements Government Gazette Index 1927, Vol. I, Supplement to the Straits Settlements Government Gazette dated 4 March 1927 at pp. 23 and 24.

74. Article VI of the Hague Rules provides that parties may agree to contract out of the Hague Rules in respect of particular goods provided (1) no bill of lading has been issued or shall be issued, and (2) that the agreed terms of the contract for the carriage of goods shall be embodied in a receipt which shall be a non-negotiable document and marked as such. Article VI of the Hague-Visby Rules is in *pari materia* with Article VI of the Hague Rules.

75. 14 & 15 Geo. 5 c. 22. Section 4 of the United Kingdom Carriage of Goods by Sea Act, 1924 provided that "Article VI of the Rules shall, in relation to the carriage of goods by sea in ships carrying goods from any port in Great Britain or Northern Ireland to any other port in Great Britain or Northern Ireland or to a port in the Irish

Free State, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted."

76. This was consequential to the inclusion of section 2 which defined thc Rules referred to in COGSA.

77. As for the two conditions, see paragraph 53 of this Report.

78. Section 6(a) was originally crafted as section 5(a) of the Carriage of Goods by Sea Ordinance, 1927 and in the early 20th century, it was certainly part and parcel of commercial practice to carry goods in sailing ships (unassisted by any motor combustion engine) *from* and *to* Singapore.

79. From enquiries made by the Trade Development Board. The Port of Singapore Authority is in charge of the Barter Trade Centre where cargo carried in the sailing ships plying between Indonesian ports and Singapore are discharged and loaded. The Trade Development Board is in charge of the issuance of import and export permits for the unmanifested cargo carried on board the sailing ships.

80. See The Report of the Joint Committee on the Indian Carriage of Goods by Sea Bill published in *THE AIR MANUAL OF UNREPEALED CENTRAL ACTS*, 5th Ed. (1989), Vol. 3, at p.399.

81. Or intended to be issued.

82. It is worthy of note that the business community of the Straits Settlements was, to some extent, responsible for the eventual text of section 5(b) of the Carriage of Goods by Sea Ordinance, 1927 (the precursor of section 6(b) of COGSA). See paragraph 58 of this Report and, *supra*, notes 66, 71,72 and 73.

83. See also, *supra*, the cases cited above in note 56.

APPENDICES

I Bill containing proposed amendments to the Carriage of Goods by Sea Act (as revised on 22 October 1994)

II Select Bibliography

APPENDIX I

Bill containing proposed amendments
to the Carriage of Goods by Sea Act
(as revised on 22 October 1994)

APPENDIX I

[Amendments made on 22nd October 1994 shown in "strike-out" (deleted) and "underlined" (inserted) fonts.]

A BILL

i n t i t u l e d

An Act to amend the Carriage of Goods by Sea Act (Chapter 33 of the 1985 Revised Edition). Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. - (1) This Act may be cited as the Carriage of Goods by Sea (Amendment) Act 1994 and shall come into operation on such date as the Minister may, by notification in the Gazette, appoint.

(2). This Act shall apply to any contract of carriage entered into on or after the date of commencement of this Act.

Repeal and reenactment of section 3.

2 The Carriage of Goods by Sea Act (referred to in this Act as the principal Act) is amended by repealing section 3 and substituting the following section therefor:

"Application of Rules. 3.

3.-(1) The provisions of the Rules, as set out in the Schedule to this Act, shall have the force of law.

(2) Without prejudice to subsection (1), the provisions of the Rules shall also have effect (and have the force of law) in relation to and in connection with the carriage of goods by sea in ships where the port of shipment is ~~in~~ a port in Singapore, whether or not the carriage is between ports in two different States within the meaning of Article X of the Rules.

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3) Subject to subsection (4), nothing in this section shall be construed as applying anything in the Rules to any contract for the carriage of goods by sea, unless the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title.

(4) Without prejudice to paragraph (c) of Article X of the Rules, the Rules shall have the force of law in relation to -

(a) any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract; and

(b) any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of

(5) For the purposes of subsection (4), where subsection 4(b) applies, the Rules shall apply -

(a) as if the receipt referred to therein were a bill of lading; and

(b) subject to any necessary modifications and in particular with the omission of the second sentence of paragraph 4 and of paragraph 7 in Article III of the Rules.

(6) If and so far as the contract contained in or evidenced by a bill of lading or receipt referred to in subsection (4) (a) or (b) applies to deck cargo or live animals, the Rules as given the force of law by that subsection shall have effect as if Article I (c) did not exclude deck cargo and live animals.

(7) In subsection (6), "deck cargo" means cargo which by the contract of carriage is stated as being carried on deck and is so carried

(8) The Minister may, from time to time by order published in the Gazette, specify the respective amounts which, for the purposes of paragraph 5 of Article IV and of Article IV bis of the Rules, are to be taken as equivalent to the sums expressed in francs which are mentioned in paragraph 5(a) of Article IV.".

Repeal of Sections 5 and 6.

3. Sections 5 and 6 of the principal Act are repealed.

EXPLANATORY STATEMENT

This Bill seeks to amend the Carriage of Goods by Sea Act to remove any doubt that the Hague Rules as amended by the Brussels Protocol 1968 set out in the Schedule to the Act ("the Hague-Visby Rules") have mandatory statutory force in Singapore. The amendment will also remove the restriction that the Hague-Visby Rules apply only to outward bound cargo i.e. goods carried from Singapore to another port but not to inbound cargo i.e. goods carried from another port outside Singapore to a port in Singapore. Clause 2 repeals and re-enacts section 3 of the Act for these purposes.

The Rules will also have mandatory statutory force in relation to -

(a) any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract; and

(b) any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods by sea which expressly provides that the Rules are to govern the contract.

In the cases mentioned in paragraphs (a) and (b) above, the Rules will be extended to apply to live animals and deck cargo which by the contract of carriage is stated as being carried on deck and is so carried.

Clause 3 repeals section 5 of the Act thereby removing the requirement that an outward bound bill of lading had to have an express statement, often known as a "clause paramount", incorporating the Hague-Visby Rules into the bill of lading. This technique is rendered unnecessary by the introduction of the new section 3 (1) of the Act which declares that the Hague-Visby Rules have the force of law. Clause 3 also repeals section 6 of the Act as the Rules by their own terms do not apply to contracts of carriage not covered by a bill of lading or other similar document of title.

EXPENDITURE OF PUBLIC MONEYS

This Bill will not involve the Government in any extra financial expenditure.

APPENDIX II

Select Bibliography

APPENDIX II

SELECT BIBLIOGRAPHY

1. Tan Lee Meng on *The Law in Singapore on Carriage of Goods by Sea* (1986 Ed.) at pp. 206 to 210

2. F.M.B. Reynolds, *"Singapore and the Visby Rules"* (1985) 6 Sing. L. R. 163

3. Geethangani Rodrigo, *"Application of the Hague-Visby Rules in Singapore"* (1985) 27 Mal. L.R. 197

4. F.A. Mann, *"Statutes and Conflict of Laws"* in (1972-73) 46 B.Y.I.L. 117

5. F.M.B. Reynolds, *"The Implementation of Private Law Conventions in English Law: The Example of the Hague Rules"*, Butterworths Lectures 1990-91, p. 1

6. Halsbury's Statutes, Fourth Edition (1988), Vol. 39 under the chapter on *"Shipping and Navigation"* at p. 833

7. *THE AIR MANUAL OF UNREPEALED CENTRAL ACTS*, 5th Ed. (1989), Vol. 3, at p. 399.